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SUPREME COURT OF THE UNITED STATES

PAUL TALCOTT CURRIER,
COMMUNICATION BRIDGE GLOBAL, INC.

Petitioner,

vs.

ROBERT CHOW,

Respondent.

On Petition for Writ of Certiorari to the First District California Court of Appeals, Div. Five

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI, VOLUME II

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A110455

IN THE COURT OF APPEAL OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ROBERT CHOW,

Plaintiffs,

vs.

PAUL TALCOTT CURRIER,
COMMUNICATION BRIDGE GLOBAL, INC.,

Defendants.

AND RELATED ACTIONS.

Appeal from the Superior Court, San Francisco County
Hon. Ronald Quidachay, Judge

APPELLANT'S OPENING BRIEF

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A011455

IN THE COURT OF APPEAL OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ROBERT CHOW,

Plaintiffs,

vs.

PAUL TALCOTT CURRIER, COMMUNICATION BRIDGE GLOBAL, INC.,

Defendants.

AND RELATED ACTIONS.

APPELLANT'S OPENING BRIEF

I.INTRODUCTION

Defendant COMMUNICATION BRIDGE GLOBAL, INC. ("CBG") presents this brief in support of its appeal from the order denying its motion for relief from the default judgment entered against it on February 7, 2003, in the above-captioned action[5]. The order denying CBG's motion for relief from judgment was signed and filed on May 12, 2005[6]. This court has an inherent equitable power to set aside judgments that are

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[5] *Judgment by Court After Default*, Superior Court Case File ("SCCF") p. 348-349.

[6] *Order Denying Relief From Default Judgment*, SCCF p. 1274-1275.

inequitable and contrary to the interests of justice and the law. This is a case in which the Court should exercise that power, because the default judgment is inherently inequitable, having been obtained by "extrinsic fraud or mistake" and the positive misconduct of CBG's attorneys, Vincent Spohn ("Spohn") and Ricardo Saria ("Saria"), and also because the default judgment against CBG is not consistent with the judgment in favor of co-Defendant PAUL TALCOTT CURRIER ("CURRIER") after trial.

Plaintiff-Appellee ROBERT CHOW ("CHOW") filed an opposition to the motion to vacate the default, based on the fact that no proposed answer was filed with the motion[7]. CHOW also opposed the motion based on his attorney's assertions that CHOW did not commit any fraud concealing this action's existence or the need to file a responsive pleading from CBG[8]. Finally, CHOW opposed the motion on the grounds that CBG waited too long to file it[9]. None of those arguments had or have merit.

CHOW's entire lawsuit was a ruse concocted to strip CURRIER of his personal and intellectual property, as well as the assets of CBG and Communications Bridge USA, Inc. ("CBUSA."). Every claim CHOW asserted against CURRIER in this case was found by Judge Goldsmith of the San Francisco Superior Court to be wholly without merit, as discussed below[10]. For that reason, the decision Judge Quidachay, the law and motion judge in that court, not to vacate the default taken against CBG in the same case, based on the same facts, which were already adjudicated on the merits, makes no sense whatsoever, and must be reversed. Judge Quidachay's shameful abuse of discretion

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[7] *Opposition of Plaintiffs to Defendant Communication Bridge Global, Inc.'s Motion to Vacate Default Judgment*, SCCF pp. 1092 – 1095.

[8] *Id*, at 1093.

[9] *Id.*, at 1094.

[10] *Statement of Decision*, SCCF, pp. 938-951, p. 948, 950.

completely negates the principle that every case should be tried on its merits.

II. STATEMENT OF APPEALABILITY

The denial of a motion to vacate a judgment is an appealable order even where the time to appeal the judgment itself has lapsed[11]. The Notice of Appeal in this case was filed immediately after the entry of the order denying the motion to vacate the judgment against CBG in this case. As such, the notice of appeal was timely and this appeal is properly before this Court.

III. ARGUMENT

A. On a Motion to Vacate a Judgment the Standard of Review is "Abuse of Discretion."

The decision of whether to vacate judgment on grounds of fraud or mistake is within sound discretion of trial court and will not be reversed absent a clear abuse of discretion[12]. In other words, to prevail on appeal from an order denying a motion to vacate a default, the moving party must show that the trial court exceeded the bounds of reason, which is the test for abuse of discretion[13].

However the trial court's discretion to relieve a party from judgment or order on the basis of mistake, inadvertence, excusable neglect, is not unlimited and must be exercised in a manner consistent with the spirit of the law. In other words, the trial court's exercise of such discretion

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[11] *Howard v. Lufkin* (1988) 206 Cal.App.3d 297, 301.

[12] *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233; *Costa v. Traina* (1962) 200 Cal.App.2d 655, 662; *Rivercourt Co., Ltd. v. Dyna-Tel, Inc.* (1996) 41 Cal.App.4th 1477, 1480; *Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139, 1149.

[13] *Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1318-1319, *review denied.*

should serve the purposes of the law and substantial justice, not defeat them[14].

For the reasons explained below, the trial court abused its discretion in denying CBG's motion to vacate the default judgment against it. This Court should overturn the ruling by the trial court and either enter judgment for CBG, or remand the case to the trial court with instructions to grant the motion to vacate the default judgment.

B. The Trial Court Abused Its Discretion By Denying The Motion to Vacate the Judgment

1. Court Policy Favors Hearing on the Merits.

California court policy is that every case should be heard on the merits[15]. In other words, the policy of the law is that cases should be heard on the merits wherever possible[16]. As such, even one good ground to set aside default judgment will suffice[17].

For the reasons detailed more fully below, the trial court should have granted the motion to set aside the judgment in the instant case, because this case cries out for equitable relief.

2. The Court Ignored Multiple Grounds for Relief.

The Court ignored the fact that CBG was unable to appear without an attorney, and did not have the funds to hire such an attorney because of CHOW's

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[14] *Elston*, supra. See also, *Rivercourt*, supra.

[15] *Girard v. Monrovia School Dist.* (1953) 121 Cal.App.2d 737, 740.

[16] *Desper v. King* (1967) 251 Cal.App.2d 659, 664.

[17] *Kallman v. Henderson* (1965) 234 Cal.App.2d 91, 96.

wrongful acts[18]. The Court ignored the fact that CHOW lost at trial against CURRIER in this action, without CURRIER even having to present his case[19]! The Court ignored the fact that CBG was granted relief from default in this action's sister case, San Francisco Superior Court Case No. CGC-01-323391 ("Case No. 323391")[20]. The complaint alleged in Case No. 323391 was almost identical to the complaint in the instant case; every cause of action in Case No. 323391 was plead in the complaint filed in this action[21].

The court specifically ignored the valid grounds for relief presented to it by CBG. The order denying CBG's motion for relief from default stated, in relevant part:

> "CBG was put on notice as early as August of 2001 that it was a defendant in the above-captioned action;
>
> CBG's inability to hire legal counsel, even if caused by Plaintiff Robert Chow's economic oppression of Currier and CGB [sic] is not sufficient good cause for granting relief from judgment at this date;
>
> The pleadings by Chow were against different entities, namely, Paul Currier and CBG, and therefore, a judgment in favor of Currier after trial is not inconsistent with a

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[18] *Declaration of Paul Talcott Currier in Support of Motion For Relief From Default Judgment*, SCSF, pp. 1030-1072, at 1031-1032.

[19] *Statement of Decision*, SCSF, p. 938-951, at 950.

[20] See the *Request for Judicial Notice* filed with this Court at Exhibit 1.

[21] See Exhibits 1 and 2 to Exhibit A to *Defendant Communication Bridge Global, Inc.'s Reply Memorandum of Points and Authorities in Support of Motion for Relief From Default Judgment*. (the exhibits are attached to the *Declaration of Jeffrey Weiss in Support of Motion for Relief from Judgment*, which apparently was stapled to the back of the reply memorandum before filing) SCCF p. 1096-1175, at pp.1113-1159

default judgment against CBG in Robert Chow's favor; and therefore,

IT IS HEREBY ORDERED THAT CBG's motion for relief from default judgment is DENIED[22]."

B. CBG Has Met the Requirements for Setting Aside the Judgment

1. Economic Oppression Is "Extrinsic Fraud"

This court has an inherent equitable power to vacate any judgment obtained through "extrinsic fraud or mistake[23]." In other words, the court has equitable jurisdiction to vacate or modify a final judgment where extrinsic factors kept a party from presenting case to the court. That power exists so courts may remedy the absence of a fair adversary trial in such an action. The extrinsic factor need not be actual fraud, any disability that will definitely keep a party (such as imprisonment) from being able to defend his or her rights in court qualifies as a factor giving rise to extrinsic fraud or mistake[24]. Seizing all of a company's assets so it cannot hire a lawyer, as CHOW did to CBG, is a disability that will prevent it from defending itself in court[25].

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[22] *Order Denying Defendant Communication Bridge Global, Inc.'s Motion For Relief From Default Judgment*, SCSF pp. 1275-1276, at 1276.

[23] 8 WITKIN CALIFORNIA PROCEDURE, ATTACKING THE JUDGMENT IN THE TRIAL COURT, (4TH ED. 1996) §§223, 231, PP 727, 741-742.

[24] *Humes v. Margil Ventures, Inc.* (1985) 174 Cal.App.3d 486, 499, *review denied*; C.C.P. §§328, 352, 352.1 [imprisonment, minority, insanity toll statutes of limitations]. *Hoversten v. Superior Court* (1999) 74 Cal.App.4th 636, 640.

[25] *Declaration of Paul Talcott Currier in Support of Motion For Relief From Default Judgment*, SCSF, pp. 1030-1072, at 1031-1032; *Case Management Statement*, SCCF p. 416-614, at pp.

2. This Court Can Grant Relief From "Extrinsic Fraud."

This power is not subject to the six-month limitations period set forth in C.C.P. §473; all a party seeking relief from judgment on the grounds of "extrinsic fraud" need show is that he, she, or it proceeded diligently upon discovery of the fraud[26]. In fact, motions to vacate a default judgment can be granted years after the default is entered[27].

This policy is also codified in California Code of Civil Procedure §1916[28], which states "Any judicial record may be impeached by evidence of a lack of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings." A challenge to a judgment pursuant to C.C.P. §1916 may be made at any time, even after the judgment has long since become final, either by an independent suit in equity, or by motion in the original proceedings[29].

However, the power to vacate a judgment exists independently of the Code of Civil Procedure; it is an inherent equitable power of the Court[30]. The court possesses the power to vacate a judgment on the grounds of "extrinsic fraud" at any time

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425, 451-457.

[26] *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 983-984.

[27] See, for example, *Kallman,* supra, at 94, where a motion to vacate default entered in 1960 was granted in 1964.

[28] While C.C.P. §1916 was not mentioned in the motion for relief from default judgment, and some other legal issues may have been raised for the first time on appeal here, CBG respectfully notes that a party may raise a new legal theory on appeal as long as new theory applies only to the undisputed facts in the record. *Hoffman-Haag v. Transamerica Ins. Co.* (1991) 1 Cal.App.4th 10, 15-16. It is obvious that none of the facts applicable to this appeal are in dispute.

[29] *Hickey v. Roby* (1969) 273 Cal.App.2d 752, 768.

[30] *County of San Diego v. Magri* (1984) 156 Cal.App.3d 641, 646; *Necessary v. Necessary* (1962) 207 Cal.App.2d 780, 782; *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855.

following the entry of judgment, even years afterwards.

This brings us to a discussion of what constitutes "extrinsic fraud." That term has been interpreted very broadly by California courts, in that "extrinsic fraud" means virtually any circumstance by which a party was deprived of a fair hearing; **there need be no actual fraud or mistake for a court to properly grant relief on these grounds!**[31] Even in the absence of actual fraud, where a party can show it was denied its day in court by circumstances beyond its control on motion, a court will extend a liberal interpretation of "extrinsic fraud" to relieve a litigant from a default taken against it without a fair adversary hearing[32]. In other words, fraud is "extrinsic" if it deprived the party of its "day in court.[33]"

3. Even If the Economic Oppression Was Not "Extrinsic Fraud," It Qualifies as "Extrinsic Mistake."

As stated above, extrinsic fraud is not the only ground for allowing equitable relief from a judgment or order that is otherwise final and conclusive. In certain cases, the ground for relief is not fraud but rather the excusable mistake of the party that results in the party's failure to litigate a claim or defense[34].

To show extrinsic mistake, a party must show the entry of an unjust judgment without a fair adversary hearing[35]. In the instant case, it is clear that the judgment against CBG is both unjust and that there was no fair adversary hearing. That is because the judgment against CBG was not

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[31] *Marriage of Park* (1980) 27 Cal.3d 337, 342; *Estate of McGuigan* (2000) 83 Cal.App.4th 639, 649-650 as modified on denial of rehearing. See also *Hoversten*, supra, at 640.

[32] *Corey v. Weerts* (1963) 214 Cal.App.2d 416, 422.

[33] *Id*, see also *Marriage of Modnick* (1983) 33 Cal.3d 897, 905.

[34] *In re Estate of Beard* (1999) 71 Cal.App.4th 753.

[35] *Id.*

consistent with the judgment in favor of CURRIER, CBG's sole agent in all causes of action in the same case. Obviously, there was also no adversary hearing because the judgment was by default.

Extrinsic mistake is available as a ground for relief from an order or judgment where the party cannot show extrinsic fraud, but has shown excusable neglect, hardship, or other grounds for the failure to press a claim or defense[36]. In this case, CBG was unable to appear because there were no funds to pay for an attorney to represent CBG in court, as Defendants stole, seized and looted CBG's assets, and forced the only legitimate officer, employee, and agent of CBG, CURRIER onto the street and into abject and total poverty. For the reasons stated above, "extrinsic mistake" could and should have been used by the trial court as grounds to vacate the default judgment against CBG.

Failure to litigate a claim based on the promise of the other party, where the promise is later breached, is grounds for relief based on extrinsic mistake[37]. In the instant case, CHOW made promises to both the shareholders of CBG and CBUSA, promises that he would pay CURRIER back wages, which in fact, CHOW owed him for work performed from October of 2000 until August 8, 2001, when CURRIER was illegally evicted, by and through CHOW's agents from his office suite in which he was living, because CHOW had refused to continue to pay the agreed-upon apartment allowance for CURRIER[38].

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[36] *Id.*

[37] *Beard*, supra.

[38] CURRIER's Case Management Statement, filed January 2, 2004, Attachment numbered 21, p. 53, ¶ 313. SCSF at p. 469, ¶313. See also, the same attachment at ¶¶245, 247, 286-289, 294, and 295 (pp. 514-515, 522-523) for other promises CHOW made to CURRIER regarding the establishment, funding, and running of CBUSA and CBG that CHOW had no intention of honoring.

4. A Party's Incapacity Is Grounds for Equitable Relief as "Extrinsic Mistake."

The incapacity of a party or its legal counsel is sufficient to establish "extrinsic mistake" in cases that may not r e to the standard of "extrinsic fraud[39]." In case this Court finds that the frauds of CHOW are not sufficient, this Court has a separate ground on which to grant relief, that of "extrinsic mistake."

Where a party to an action is incapacitated to the extent that he or she cannot understand his or her rights and/or cannot act upon them, a judgment obtained against that party may (and should) be reversed on the grounds of extrinsic mistake. For example, in the case of *Olivera v. Grace*[40], the California Supreme Court found that a judgment quieting title against a woman during the time that she had suffered a traumatic head injury but had not yet been ruled legally incompetent could be vacated upon motion by the woman's administrator. Similarly, in *Dei Tos v. Dei Tos*[41], the court found that a woman's obtaining a divorce from her husband during a period of insanity was also reversible under the "extrinsic mistake" doctrine. The *Dei Tos* court noted:

> Whether this was by fraudulent design or by mere mistake or inadvertence on the part of the plaintiff makes no difference. The principle of the law involved is that, through no fault of his, this defendant was not permitted to participate in the proceedings[42].

Finally, in *Watson v. Watson*[43], a California Court of Appeals noted that a Japanese national

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[39] WITKIN, *supra*, at §232, p. 742.
[40] (1942) 19 Cal.2d 570, 578.
[41] (1951) 105 Cal.App.2d 81, 85.
[42] *Id.*
[43] (1958) 161 Cal.App.2d 35, 39

with limited knowledge of the English language could vacate the divorce decree obtained by her husband, a U.S. national who had brought her to California after their marriage on the grounds of her affidavit stating a lack of knowledge of English and of the legal significance of the papers served on her by her husband, also on grounds of "extrinsic mistake." The court's rationale was that, even in the absence of fraud,

> [i]t does appear that she [the Japanese woman] had fairly valuable property rights to protect and plaintiff [the U.S. national] acquired those rights by what might reasonably be said to amount to her ignorance, mistake, or inadvertence, without an opportunity on her part to be present, and without a *fair adversary hearing*[44].

For example, in *McCreadie v. Arques*[45] the court held that the death or serious illness of counsel which prevents appearance at trial or a fair presentation of the cause may warrant setting aside the judgment where the circumstances could not have been prevented by due diligence. The wrongful conversion of all of CURRIER's and CBG's assets by CHOW was sufficient to place CBG in a position where it could not hire an attorney to represent it, and therefore, CBG could not participate in the litigation[46]. CHOW's wrongful

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[44] *Id.*

[45] (1967) 248 Cal.App. 2d 39, 45. See also *Jeffords v. Young* (1929) 98 Cal.App.400, 405 [death of attorney and erroneous advice from assisting attorney that case had been continued were grounds for relief from judgment]; *Antonsen v. Pacific Container Co.* (1941) 48 Cal.App.2d 535,539. [relief granted where attorney suspended and allowed default judgment to be taken without notice to client].

[46] See, generally, the *Declaration of Paul Talcott Currier in Support of Motion for Relief from Default Judgment* ("Currier Dec."), filed with the initial moving papers in that motion.

acts towards CBG could not have been prevented by due diligence, and are analogous to the sudden illness or death of a party's attorney, since CBG was unable to hire legal counsel because of CHOW's actions.

5. The Positive Misconduct of a Party's Attorney is Grounds for Relief Based on "Extrinsic Mistake."

In the instant case, CBG's own legal counsel, Spohn, conspired with CHOW to steal CBG's assets[47]. Spohn even testified against CURRIER on CHOW's behalf at the trial in Case No. 323394[48]. It is black-letter law that when a party's own legal counsel "corruptly sells out his client's interest to the other side," the judgment may be overturned either on the grounds of extrinsic fraud[49].

Successive court decisions based upon *Throckmorton* have expanded that doctrine to the point that an attorney's positive misconduct also gives rise to relief from judgment on the grounds of "extrinsic mistake." Where an attorney utterly fails to take any action to represent his or her client, the client may obtain relief from a judgment taken against the client on those grounds[50]. See, for example, *Orange Empire Nat. Bank. v Kirk*[51], in which the attorney representing a person sued by a bank based on forged guaranty never presented a defense based on his client's signature being forged and never moved to vacate the default. The Court of Appeals reversed the order denying Kirk's successor attorney's motion for relief from default, which was filed after the 6-month C.C.P. §473

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[47] *Case Management Statement*, SCCF p. 416-614, at pp. 451-457.

[48] *Statement of Decision*, SCCF pp. 938-951, at 945-946.

[49] *United States v. Throckmorton* (1878) 98 U.S. 61, 65.

[50] WITKIN, *supra*, at §235, p. 747-748.

[51] (1968) 258 Cal.App.2d 347, 354-355.

period based on the grounds that that Kirk's prior attorney's negligence was so gross as to constitute "actual misconduct[52]." See also *Aldrich v. San Fernando Valley Lumber Co.*[53] in which an attorney's being suspended by the State Bar without notifying his client, and the resultant failure to answer interrogatories or oppose a motion to dismiss, constituted "positive misconduct" by the attorney warranting relief. As such, even if this Court finds, or the trial court found, that Spohn's taking the position of the party suing CBG and actually testifying against CURRIER in court was not "extrinsic fraud," it was certainly "extrinsic mistake," since Spohn obviously did nothing to help CBG defend itself in this matter.

Furthermore, the completely inept handling of CURRIER's case by attorney Saria caused CURRIER's cross-complaint and the incompetently-written *First Amended Cross-Complaint* to be stricken, including the claims CURRIER attempted to file on CBG's behalf[54]. Saria's later incompetence caused the trial court to deny him permission even to file a second amended cross-complaint to replace the grossly inadequate first amended cross-complaint he prepared on CURRIER's behalf[55]. Saria admitted to his ineptitude causing a default to be taken against CURRIER and that the failure

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[52] *Id.*

[53] (1985) 170 Cal.App.3d 725, 738.

[54] See, *Order Granting Motion to Strike First Amended Cross-Complaint*, SCCF pp. 307-308, at 308, noting that no opposition was filed, and that CURRIER appeared "without his counsel, Ricardo C. Saria."

[55] *Notice of Motion and Motion For Orders to Vacate Default Judgment; For Leave to File Second Amended Answer; And For Leave to File Second Amended Cross-Complaint*; SCCF, pp. 324-338, *Order After Hearing on Motion to Vacate Default and Default Judgment*, SCCF p. 388-389, at p. 389. *First Amended Cross-Complaint*, SCCF, p. 268-270.

to timely file a cross-complaint was his fault[56]. Saria took no further action in Case No. 323394, except to withdraw as CURRIER's legal counsel, and took no action on behalf of CBG, despite Saria's agreement and obvious duty to represent CBG as well as Currier[57].

6. The Judgment Should Be Overturned on Duress Grounds.

A judgment obtained by duress can be grounds for relief from a final judgment[58]. For example, a California Court of Appeal reversed an order denying a motion to vacate a marital settlement agreement incorporated into a judgment based on the wife's claim that her husband coerced her into signing it[59]. The Court of Appeal reversed the judgment for a determination from the trial court as to whether the settlement agreement was agreed to under duress or not, given the unequal nature of the settlement, the fact that the settlement was hurriedly drafted, and the husband's history of violence[60].

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[56] *Notice of Motion and Motion for Orders to Vacate Default Judgment; For Leave to File Second Amended Answer; And, For Leave to File Second Amended Cross-Complaint*, SCCF 324-338, at 328-330.

[57] See, generally, the entire case file, for the fact that Saria never substituted in as CBG's counsel and took no legal action to defend CBG. It would have made no sense for Saria to represent CURRIER but not CBG, since a default against CBG would basically become CURRIER's responsibility, because CURRIER was the only remaining officer, employee, and one of the few remaining legitimate shareholders of CBG, not to mention the damage that a default judgment against CBG would do to CURRIER's case. See California Rule of Professional Conduct Rule 3-110(A) (duty of competent representation).

[58] WITKIN, *supra*, at §236, pp. 748-749.

[59] *Marriage of Brockman* (1987) 194 Cal.App.3d 1035.

[60] *Id*, at 1047.

In a subsequent case, *Marriage of Baltins*[61], the Court of Appeal held that the strict definition of "duress" under Civil Code §1569[62] had been "relaxed" and that under the modern rule, "duress" may take the form of "threats, importunity, or any form of mental coercion[63]" and it is shown where a party willfully used threats or pressure to induce another party to act or refrain from action, to the other party's harm[64]. The courts examine the effect of the threats or exhortations upon the affected party's mind, rather than the nature of the threats or exhortations themselves[65].

In *Baltins*, the wife was emotionally vulnerable, distraught, and could not deal with her husband effectively on an "arms-length" basis during their divorce[66]. The *Baltins* court noted that

> [The husband] actively interfered with her obtaining legal assistance and conducted himself in a manner calculated to deprive [the] Wife of representation by counsel... Ultimately, when Wife signed the agreement from which the trial court granted her relief, she was not represented by counsel[67].

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[61] (1989) 212 Cal.App.3d 66, 84.

[62] Civil Code §1569 states: " Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or
adopted child of such party, husband, or wife;

2. Unlawful detention of the property of any such person; or,

3. Confinement of such person, lawful in form, but fraudulently
obtained, or fraudulently made unjustly harrassing [sic] or oppressive."

[63] WITKIN, *supra*, at §236, p. 750.

[64] *Baltins*, supra, at 84.

[65] *Id.*

[66] *Id.*

[67] *Id.*, at 85.

CHOW acted in such a way as to deprive CBG of counsel (i.e., stealing its assets) in order to obtain a default judgment against CBG.

It is interesting to note here that CHOW's having CURRIER arrested using a fraudulently-obtained and expired restraining order fits C.C. §1569's definition of "duress[68]." Furthermore, CURRIER was separated from his property, as CBG was from its property and assets, when the fraudulently-obtained restraining order against him was executed by agents of CHOW (e.g. attorneys Thomas Mauriello, Michael Fish)[69]. For this reason, the judgment against CBG could and should have been overturned by the trial court on the grounds of duress.

C. CBG's Delay In Seeking Vacation of the Judgment Was Reasonable and the Vacation Will Not Prejudice CHOW.

1. This Court Can Grant Relief Years After a Judgment.

The inability of a party to hire legal counsel in order to mount a legal defense, caused by that party's indigence, has been recognized as grounds for vacating a judgment, even long after the six-month period for reconsideration under C.C.P. §473(b) or 473.5(a)[70], despite the doctrine of laches. The doctrine of laches is based on the idea of a party's being foreclosed from raising a claim or defense where the party wishing to assert the claim or defense was unreasonably dilatory in doing so and thereby caused prejudice to the opposing party.[71] In the case of *County of Ventura v. Tillett*, the Court of Appeal found that "Persons who settle

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[68] *Declaration of Paul Talcott Currier in Support of Motion For Relief From Default Judgment*, SCSF, p. 1030-1072, at 1031.
[69] *Id.*
[70] *County of Ventura v. Tillett* (1982) 133 Cal.App.3d 105, 114.
[71] *Fountain Valley Regional Hospital & Medical Center v. Bonta'* (1999) 75 Cal.App.4th 316, 323-324.

their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard[72]."

In *Tillett*[73], the defendant was an indigent woman who entered into a stipulation with the local district attorney's office in a welfare and child support matter without the opportunity to seek the advice of legal counsel. The appellate court found that the woman was not guilty of laches in waiting more than a year and a half before moving to have the judgment vacated, since she was quick to obtain legal counsel once she was found guilty of contempt, and the district attorney's office could show no prejudice from the delay, and the test for granting or denying a motion to vacate a judgment is the reasonableness of the moving party's delay, measured against the prejudice to the nonmoving party[74].

In the instant case, not only was CBG denied the opportunity to seek legal counsel as a result the Defendants' actions; *CBG was prevented from mounting any sort of legal defense on its own behalf, through no fault of its own!* A corporation is a legal person. It has the same right to defend itself in court as a natural person[75]. However, a corporation cannot appear in court unless it is represented by a licensed attorney. The corporation's non-attorney agents and officers cannot appear for the corporation "*in propria persona*.[76]"

Finally, the point of *Tillett* was that even in a civil lawsuit, where a person is faced with the

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[72] *Id.*, citing *Boddie v. Connecticut* (1971) 401 U.S. 371, 377.
[73] *Id.*
[74] *Id.*, at 115, citing *Marriage of Park*, supra, at 345.
[75] *American Alternative Energy Partners II v. Windridge, Inc.* (1996) 42 Cal.App.4th 551, 559; *Friendly Village Community Ass'n, Inc. v. Silva & Hill Construction Co.* (1973) 31 Cal.App.3d 220, 224.
[76] *CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145; *Tom Thumb Glove Co. v. Han* (1977) 78 Cal.App.3d 1,3.

awesome power of the State, even a stipulated judgment is subject to vacation if that party is not represented by counsel[77], because of the massive disparity in bargaining power and legal skill between state, local, or federal government and an unrepresented indigent. It follows that an indigent corporation that cannot appear because it is not represented by counsel should be able to seek similar equitable relief. This is especially true when dealing with a judgment obtained against it by an extremely wealthy individual who caused the corporation to become insolvent in the first place[78].

Where a party can show that circumstances beyond that party's control conspired to keep that party out of court, the court should to vacate the default judgment against that party. See, for example, *Hoversten v. Superior Court*[79], in which a prisoner who was unable to appear and present his argument in a child custody case by virtue of his being imprisoned was entitled to the custody order issued in his absence being vacated pending a new hearing on the matter. In this case, CBG's insolvency kept it from being able to secure counsel[80]. The actions of CHOW caused CURRIER and CBG to be insolvent, as they fraudulently took all of CBG's assets, leaving CBG with no resources with which to procure legal counsel. Thus, the doctrine of equitable estoppel, or something analogous to it, applies here. As the California Supreme Court stated in *Lantzy v. Centex Homes, Inc.*:

> Equitable estoppel, however, . . . comes into play only after the limitations period has run and addresses . . . the circumstances in which a party will be estopped from

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[77] *Tillett*, supra, at 114-115.

[78] *Declaration of Paul Talcott Currier in Support of Motion For Relief From Default Judgment*, SCSF, p. 1030-1072, at 1031-1032.

[79] (1999) 74 Cal.App.4th 636, 640.

[80] *Case Management Statement*, SCCF pp. 416-614, at pp. 425, 451-457.

> asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period. [Equitable estoppel] is wholly independent of the limitations period itself and takes its life . . . from the equitable principle that no man [may] profit from his own wrongdoing in a court of justice.[81]

Similarly, the Appellees should not be allowed to profit from their own fraud, misrepresentations, theft, forgery and oppression in this, or any other, court of justice by taking a default against an innocent defendant that cannot defend itself as a result of their wrongdoing.

As stated in the recent case of *Falahati v. Kondo*[82],

> Because plaintiffs knew or should have known they procured their default against [the defendant] in violation of [its] statutory and constitutional rights their claim to prejudice if the default and subsequent judgment are nullified are substantially weakened. Conversely, the fact that the default was procured against [the defendant] not because of some mistake or neglect on his part, but because he was denied [its] statutory and constitutional right to be heard substantially strengthens [its] entitlement to equitable relief.

In the *Kondo* case, the plaintiffs were charged with the knowledge that adding defendant Kondo's name to the caption of their third amended complaint (by way of errata notice) without stating

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[81] (2003) 31 Cal.4th 363, 382, citing *Battuello v. Battuello* (1998) 64 Cal.App.4th 842 , 847-848, quoting *Bomba v. W. L. Belvidere, Inc.* (7th Cir. 1978) 579 F.2d 1067, 1070.

[82] (2005) 127 Cal.App.4th 823, 834

any cause of action against him, and then had a default entered against him the same day, effectively depriving Kondo of the chance to defend himself against the allegations against him.

In any event, the facts of any case in which equitable relief from judgment is sought will determine whether or not such relief is granted; that is courts have to evaluate these cases on an individual basis[83]. In the instant case, the record shows that CHOW and his attorneys acted to place CURRIER, CBG's only officer or director, onto the street, by filing false police reports against him, and stripped CBG of its assets in an illegal seizure of the assets of CBG, CBUSA, CURRIER, and the assets of several corporate entities run by CURRIER.

Furthermore, CURRIER's attorney, Spohn, corruptly sold out CURRIER's interests to CHOW[84]. In fact CHOW himself owed a fiduciary duty to CURRIER, which he breached, resulting in CBG's inability to file a timely responsive pleading in this case[85]. CHOW also made several material misrepresentations of fact to this Court and to the San Francisco Police in order to force CURRIER out of 215 Leidesdorff Street in order to facilitate CHOW's theft of CBG's assets from the building[86].

The California Supreme Court has repeatedly ruled that the breach of a fiduciary duty arising from a confidential relationship is extrinsic fraud warranting such relief, even though the same actions, when taken in a non-fiduciary relationship, would **not** be considered extrinsic fraud[87]. As the California Supreme Court ruled in *Estate of*

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[83] *Galper v. Galper* (1958) 162 Cal.App.2d 391, 396.

[84] *Declaration of Paul Talcott Currier in Support of Motion For Relief From Default Judgment*, SCSF, pp. 1030-1072, at 1031-1032; *Case Management Statement*, SCCF pp. 416-614, at pp. 451-457.

[85] *Id.*

[86] *Id.*

[87] *Estate of Sanders* (1985) 40 Cal.3d 607, 615.

Sanders, "Courts are particularly likely to grant relief from a judgment where there has been a violation of a special or fiduciary relationship[88]." As detailed above, the relationship between Spohn, CURRIER, and CBG was a fiduciary relationship, as Spohn was the legal counsel for both CURRIER and CBG at the times relevant to this action. In addition, Saria utterly failed as the legal counsel for CURRIER and CBG in case no. 323394[89], as described above, due to his adjudged gross malpractice[90].

2. CBG Has Met the Three Elements for Equitable Relief

According to the case of *Gibble v. Car-Lene Research,*[91] a party seeking relief under the Court's inherent equitable power to set aside unjust judgments after the six-month period for obtaining relief pursuant to C.C.P. §473 must satisfy three elements. The three elements are showing: (1) the party has a meritorious case; (2) a satisfactory excuse for not presenting a defense in the original action; and (3) due diligence in seeking to set aside the judgment. In this case, CBG satisfies all three elements. CBG has a meritorious defense: namely, as stated below, that CURRIER has already successfully defended this case against CHOW, which is the basis for the motion for judgment on the pleadings filed in this action[92]. Also, the

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[88] *Id.*

[89] *Request for Sanctions Due to Negligence Against Ricardo C. Saria,* , SCCF p. 400-405.

[90] CURRIER is awaiting the entry of judgment against Saria (ordered as a discovery sanction) in CURRIER's legal malpractice action against Saria, San Francisco Superior Court Case No. CGC-04-433737.

[91] (1998) 67 Cal.App.4th 295, 315.

[92] *Defendant Communication Bridge Global,Inc.'s Notice of Motion and Motion for Judgment on the Pleadings; Memorandum of Points and Authorities in Support Thereof; Request for Judicial Notice in Support Thereof* ; SCCF 1203-

allegations made against CURRIER are the same allegations made against CBG[93]. The reason CBG did not present a defense was that CHOW's economic oppression of CURRIER and CBG made it impossible for CBG to defend itself[94].

Finally, CBG moved for relief from judgment as soon as it had the financial means to hire Jeffrey Weiss as its legal counsel. As such, this Court can and should set aside the judgment[95].

3. CBG Has Met the Standard of Proof for Equitable Relief.

CBG has met the standard of proof necessary to obtain equitable relief from the default judgment against it. Under California law, a party must make a substantially higher showing of good cause (i.e. extrinsic fraud), due diligence, and a meritorious case to obtain relief from judgment when seeking such relief pursuant to the court's inherent equitable power than pursuant to C.C.P. §473[96]. Unfortunately, none of the cases listed in the footnotes here, nor any other case revealed by CBG's research states exactly what showing is

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1274.

[93] *Id.*

[94] *Declaration of Paul Talcott Currier In Support of Motion for Relief From Default Judgment*, SCCF pp. 1030- 1072, ¶¶2-4; *Case Management Statement*, SCCF p. 416-614, at pp. 425, 451-457.

[95] See Exhibits 1 and 2 to Exhibit A to *Defendant Communication Bridge Global, Inc.'s Reply Memorandum of Points and Authorities in Support of Motion for Relief From Default Judgment.* (the exhibits are attached to the *Declaration of Jeffrey Weiss in Support of Motion for Relief from Judgment*, which apparently was stapled to the back of the reply memorandum before filing) SCCF p. 1096-1175, at pp. 1099.

[96] *In re Lake* 202 B.R. 751, 758 (9th Cir. BAP 1996), citing *In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1074.

required[97]. Since the standard for a §473 motion detailed in *Weitz* and followed in *Mink v. Superior Court*[98], is "very slight evidence" where there is no prejudice to the opposing party, it follows that the standard of showing is something more than "very slight evidence" and something no more than a preponderance of the evidence, since that is the standard of proof in a civil proceeding. Finally, CBG moved for relief from judgment as soon as it had the financial means to hire Jeffrey Weiss as its legal counsel. As such, this Court can and should set aside the judgment.

4. CBG Has Met the Standard of Proof For A Motion To Vacate Judgment

It is clear a party seeking relief pursuant to the courts equitable power on the grounds of extrinsic fraud more than six months after entry of a default judgment must make substantially higher showing of extrinsic fraud than would a party seeking relief from default pursuant to C.C.P. §473. *In re Lake*, citing *In re Marriage of Stevenot*. *Stevenot* cites *Carroll v. Abbot Laboratories*, which cites to *Weitz v. Yankosky*, which in turn, cites to *Watson v. Dillon* for the proposition that "A stronger showing is required to justify the annulment of a judgment than is required for the opening of a default as provided by section 473 of the Code of Civil Procedure."

Unfortunately, none of the cases listed, nor any other case revealed by CBG's research states exactly what showing *is* required. Since the

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[97] *Stevenot* cites *Carroll v. Abbot Laboratories* (1982) 32 Cal.3d 892, 901 fn. 8, which cites to *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 857, which in turn, cites to *Watson v. Dillon* (1936) 6 Cal.2d 33, 42-43 for the proposition that "A stronger showing is required to justify the annulment of a judgment than is required for the opening of a default as provided by section 473 of the Code of Civil Procedure." *Watson*, at 43.

[98] (1992) 2 Cal.App.4th 1338, 1343, citing *Weitz*, supra, at 857.

standard for a §473 motion detailed in *Weiss* and followed in *Mink v. Superior Court*, is "very slight evidence" where there is no prejudice to the opposing party, it follows that the standard of showing is something more than "very slight evidence," but there appears to be no direct guidance from the legislature or the courts as to the proper standard for relief from judgment on the grounds of extrinsic fraud.

Since there is a dearth of guidance as to the standard of proof for relief from judgment entered by extrinsic fraud, the interpretation of a similar statute can be used to determine the proper standard by analogy.

For example, the standard for vacation of a sister state judgment on the grounds that California law would have provided a defense against the judgment had the sister state case been heard in a California court, pursuant to C.C.P. §1710.40, is "preponderance of the evidence[99]." Analogously, the standard for vacating a judgment on other grounds is probably the same or lower than a preponderance of the evidence, since in a C.C.P. §1710.40 case, the party seeking relief had at least some sort of hearing in a sister state. In a case where equitable relief from judgment is being sought, the party seeking relief has obtained *no* hearing on the merits whatsoever! As such, it stands to reason that a party seeking such relief should be required to make a substantial, but not overwhelming showing that the party's case satisfies all three *Gibble* elements in order to obtain equitable relief.

In any event, as detailed above, CURRIER obtained a defense judgment without even putting on a defense case-in-chief at trial in this action[100]. No other persons were alleged to have taken any

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[99] *Tom Thumb Glove Co. v. Han* (1978) 78 Cal.App.3d 1, 5.

[100] *Statement of Decision*, SCCF pp. 938, 950, citing tentative decision to grant judgment pursuant to C.C.P. §631.8 and affirming it.

action against CHOW on behalf of CBG[101]. Since the only agent of CBG alleged to have performed any actions against CHOW was found not liable, it stands to reason that *respondeat superior* nor any other theory of vicarious liability can attach to CBG here. As the California Supreme Court held 58 years ago:

> "It is the firmly-established rule that a judgment on the merits favorable to an employee in an action by a third person for a tort of the employee is a bar to an action by the third person against the employer where the latter's asserted liability for the tort rests upon *respondeat superior* and not his independent tort[102]."

As such, CBG has an overwhelmingly strong case for vacating the judgment here.

4. This Court May Grant Relief for Equitable Reasons

It is established law that a court of equity may grant relief from a default judgment against a defendant in an independent action in equity when the defendant was prevented from presenting a

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[101] Exhibits 1 and 2 to Exhibit A to *Defendant Communication Bridge Global, Inc.'s Reply Memorandum of Points and Authorities in Support of Motion for Relief From Default Judgment.* (the exhibits are attached to the *Declaration of Jeffrey Weiss in Support of Motion for Relief from Judgment*, which apparently was stapled to the back of the reply memorandum before filing) SCCF p. 1096-1175, at pp.1113-1159.

[102] *Freeman v. Churchill* (1947) 30 Cal.2d 453, 461; *Lathrop v. Healthcare Partners Medical Group* (2004) 114 Cal.App.4th 1412, 1423 -"Because the vicarious liability of the employer is wholly dependent upon or derivative from the liability of the employee, any substantive defense that is available to the employee inures to the benefit of the employer." [citing *Churchill*, supra]

case in the prior proceeding by extrinsic fraud or mistake[103]. This is true even though a motion to vacate a default has been denied in the previous action[104]. Since this court is empowered to interpret inconsistent verdicts and judgments where the trial court refuses to do so, and this appellate court has its own equitable power to vacate obviously-unfair judgments, it should do so.

5. Appellee's Opposition Arguments Regarding the Failure to File a Proposed Answer Had No Merit.

The fact that no proposed answer was filed with the motion to vacate the default judgment is inconsequential; the proposed motion for judgment on the pleadings was attached to the reply brief[105].

D. Relief From Default is Proper Here, As the Default Judgment Is Inconsistent with a Judgment Obtained From an Actual Trial on the Merits In the Same Case.

It is clear that where a default judgment is not consistent with a judgment after trial based on the same fact and law, the defaulting party's motion to vacate the default should be granted[106]. See, for example, California Code of Civil Procedure §§663 and 663a, which allow courts to substitute a correct judgment for an obviously incorrect judgment, if a motion is made by one of the parties within 180 days of the entry of the judgment. CHOW did not address this issue in his opposition, and thus, it

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[103] *Marriage of Olsen* (1994) 24 Cal.App.4th 1702, 1706-1707.
[104] *Huff v. Mendoza* (1980) 109 Cal.App.3d 677, 680.
[105] Exhibit A to *Defendant Communication Bridge Global, Inc.'s Reply Memorandum of Points and Authorities in Support of Motion for Relief From Default Judgment.* SCCF p. 1096-1175, at pp.1105-1175.
[106] *Craven v. Crout* (1985) 163 Cal.App.3d 779, 782-783.

was inappropriate to deny the motion to vacate the default where that issue was not addressed[107].

On a motion to correct an inconsistent or mistaken verdict, when the trial court refuses to interpret the verdict, the appellate court will, where possible, provide the correct interpretation[108]. Analogously, since the trial court here erroneously refused to interpret the inconsistent default judgment in light of the judgment after trial, this appellate court should do so. This court should vacate the default in favor of CHOW and enter a judgment in favor of CBG.

Similarly, a trial court's failure to make findings of fact did not preclude motion to vacate judgment because such a motion is a remedy to be used when the trial court drew incorrect conclusions of law, or rendered a an erroneous judgment, based on uncontroverted evidence and was not dependent upon whether the trial court made findings of fact[109].

To reiterate CBG's position on this issue, the complaint filed in this action states only facts alleging actionable conduct by CURRIER[110]. No one else is alleged to have taken any action harmful to the Plaintiffs on CBG's behalf. *Id.* The Plaintiffs took their case against CURRIER in this action to trial and lost on all causes of action[111]. Since the

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[107] See, for example, *Salazar v. Upland Police Department* (2004) 116 Cal.App.4th 934, 939 [summary judgment on cause of action not addressed in motion reversed as inappropriate].

[108] *Shapiro v. Prudential Property & Casualty* (1997) 52 Cal.App.4th 722, 729.

[109] *Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 153.

[110] Exhibits 1 and 2 to Exhibit A to *Defendant Communication Bridge Global, Inc.'s Reply Memorandum of Points and Authorities in Support of Motion for Relief From Default Judgment.* (the exhibits are attached to the *Declaration of Jeffrey Weiss in Support of Motion for Relief from Judgment*, which apparently was stapled to the back of the reply memorandum before filing) SCCF p. 1096-1175, at pp.1113-1159.

[111] See the *Statement Of Decision*, SCSF, p. 938-951, at 950.

facts supporting all the causes of action against CURRIER and CBG allege only conduct by CURRIER, and since a corporation can act only through its officers, directors, employees, or other agents who are natural persons[112], it follows that none of the causes of action against CBG have any evidentiary support, since the facts were found not to support any causes of action against CURRIER[113]. Since CBG could not possibly have been found liable for damages pursuant to any of the causes of action asserted against it, it would be both inequitable and against the interests of justice to allow the default judgment against CBG in the instant action to stand.

This court has an inherent equitable power to set aside judgments that are inequitable and contrary to the interests of justice and the law. This is a case in which the Court should exercise that power, because the default judgment is inherently inequitable, having been obtained by "extrinsic fraud or mistake" and the positive misconduct of CBG's attorneys, and also because the default judgment against CBG is not consistent with the judgment in favor of CURRIER after trial.

Plaintiff CHOW filed an opposition to the motion, based on the fact that no proposed answer was filed with the motion[114]. CHOW also opposed the motion based on his assertions that CHOW did not commit any fraud that concealed this action's existence or the need to file a responsive pleading from CBG[115]. Finally, CHOW opposed the motion on

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[112] *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 25; *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55,77 *rehearing denied, and review denied.*; *Black v. Bank of America* (1994) 30 Cal.App.4th 1,6 *review denied*;

[113] *Id.*

[114] *Opposition of Plaintiffs to Defendant Communication Bridge Global, Inc.'s Motion to Vacate Default Judgment*; SCCF p. 1092-1095.

[115] *Id.*

the grounds that CBG waited too long to file it. None of those arguments had any merit[116].

Furthermore, the denial of the motion to vacate the judgment in this case was also inconsistent with judgment in Case No. 323391, where default vacated against CBG in that case, as stated above.

As the California Supreme Court noted 22 years ago in *Modnick, supra,*

> "No abstract formula exists for determining whether a particular case involves extrinsic, rather than intrinsic, fraud. 'It is necessary to examine the facts in the light of the policy that a party who failed to assemble all his evidence at the trial should not be privileged to relitigate a case, as well as the policy permitting a party to seek relief from judgment entered in a proceeding in which he was deprived of an opportunity fully to present his case[117].'"

The *Modnick* rule holds true today. While equitable relief is not meant to be an "escape hatch" for attorneys or *pro se* litigants who were incompetent or unprepared for a trial or dispositive motion, it is intended to provide justice to those who were previously denied their "day in court[118]."

However, one exception to the above-stated rule that equitable relief is not available where a party fails to perform competently at trial is where a party's attorney utterly fails to represent the client[119]. Equitable relief from a judgment is

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[116] *Id.*

[117] *Modnick*, supra, at 905 citing *Jorgensen v. Jorgensen* (1948) 32 Cal.2d 13, 19.

[118] *In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1069 [aggrieved party's representation by counsel normally precludes a finding of "extrinsic fraud" against that party]

[119] *People v. One Parcel of Land* (1991) 26 Cal.App.3d 579, 584.

especially proper where a fiduciary duty was breached, or the defaulting party's rights were violated by, the party in whose favor the judgment was issued[120]. In this case, CBG was denied its day in court because of : (1) CHOW's intentional acts, which CHOW's fiduciary duties to CURRIER and CBG; (2) Spohn's breach of his fiduciary duty to CURRIER and CBG; and (3) Saria's breach of his fiduciary duties to both of his clients, CURRIER and CBG, as Saria committed outright admitted gross attorney malpractice in the underlying case.

To reiterate CBG's position on this issue, the complaint filed in this action states only facts alleging actionable conduct by CURRIER[121]. No one else is alleged to have taken any action harmful to the Plaintiffs on CBG's behalf. The Plaintiffs took their case against CURRIER in this action to trial and lost on all causes of action[122]. The facts supporting all the causes of action against CURRIER and CBG allege only conduct by CURRIER, and since a corporation can act only through its officers, directors, employees, or other agents who are natural persons, it follows that none of the causes of action against CBG have any evidentiary support. That is because the facts were found not to support any causes of action against CURRIER[123]. Since CBG could not possibly have been found liable for damages pursuant to any of the causes of action asserted against it, it would be both inequitable and against the interests of justice

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[120] See, for example, *Kondo*, supra, at 834; *Sanders*, supra, at 615.

[121] Currier Dec., ¶6, Exhibit 1 to the Currier Dec.

[122] *Statement Of Decision*, SCSF, p. 938-951, at 950.

[123] *Id.*, at 948 "Chow's testimony that he would not have joined Currier in this venture does not ring true. The Court finds that the blame fixed on defendant Currier's nondisclosure by Plaintiff is a revisionist theory concocted by Chow. The court further finds that Chow's causes of action based on nondisclosure have no substance or merit whatsoever."

to allow the default judgment against CBG in the instant action to stand.

III. CONCLUSION

For the reasons stated above, CBG's motion for relief from default judgment should have been granted. The trial court's order denying the motion for relief from default judgment should be reversed.

This court should also enter judgment for CBG at this time. Since entry of judgment is all that is left to conclude this matter, CBG humbly requests relief from default and entry of judgment in its favor at this time.

Respectfully submitted,
WEISS & WEISSMAN

Dated: September 26, 2005

By:/s_____
Jeffrey Marc Weiss
Attorneys for
Defendant
Communication
Bridge Global, Inc.

A011455

IN THE COURT OF APPEAL OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

ROBERT CHOW,
Plaintiffs,

vs

PAUL TALCOTT CURRIER,
COMMUNICATION BRIDGE GLOBAL, INC.,
Defendants.

AND RELATED ACTIONS.

Appeal from the Superior Court, San Francisco County
Hon. Ronald Quidachay, Judge

MOTION FOR RECONSIDERATION OF ORDER DENYING REQUEST FOR JUDICIAL NOTICE AND MOTION TO AUGMENT THE RECORD ON APPEAL

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[Entered January 18, 2006]

Pursuant to this Court's inherent equitable powers, as well as this Court's power to manage its own proceedings, as well as this Court's power to relieve a party from default for failure to comply with the California Rules of Court pursuant to C.R.C. 45(e). Defendant-Appellant Communications Bridge Global, Inc. ("CBG") will request, and hereby requests, that this Court reconsider its January 6th, 2006 ruling on the *Request for Judicial Notice*, as well as the *Motion to Augment Record on Appeal*, both filed by CBG on December 5th, 2005. In light of the *Reply Brief in Support of Motion to Augment Record on Appeal; Memorandum of Points and Authorities; Reply Declaration of Jeffrey Marc Weiss in Support of Motion to Augment Record; Declaration of Paul Talcott Currier; Exhibits*, and the *Reply in Support of Requests for Judicial Notice; Memorandum of Points and Authorities; Additional Declaration of Jeffrey Marc Weiss; Exhibits*, filed herewith, CBG requests reconsideration by the Court now due to new evidence not available until just recently.

This motion is supported by the memorandum of points and authorities below, as well as the *Additional Declaration of Jeffrey Marc Weiss in Support of Request for Judicial Notice* and the *Declaration of Paul Talcott Currier*, filed separately here with CBG's reply in support of that motion, and the *Reply Declaration of Jeffrey Marc Weiss in Support of Motion to Augment Record* filed separately with the *Reply in Support of Requests for Judicial Notice*, filed separately herewith in support of those requests.

Respectfully submitted,
WEISS & WEISSMAN

Dated: January 18, 2006

By: /s
Jeffrey Weiss
Attorneys for
Defendant
Communication
Bridge Global, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

This application is made pursuant to C.R.C. 45(e), which states

"(e) Relief from default

For good cause, a reviewing court may relieve a party from default for any failure to comply with these rules except the failure to file a timely notice of appeal or a timely statement of reasonable grounds in support of a certificate of probable cause."

In the instant action, the failure to designate the reporter's transcript of the trial in the underlying action, San Francisco Superior Court Case No. 323394, coupled with a deceitful misrepresentation of fact by the counsel for Appellee Robert Chow regarding the dismissal of virtually all causes of action in the underlying action, has caused a significant gap in the record this Court needs to understand the issues in this case. Additionally, CBG has been presented with new evidence of positive attorney misconduct committed by its former general counsel, attorney Vincent Spohn. The new evidence is the California Supreme Court's January 4th, 2006 action upon Currier's accusation against Vincent Spohn, and the January 10th, 2006 California State Bar

response to the California Supreme Court's order *en banc* of January 4th, 2006.

CBG moved to augment the record in this case to include excerpts from the reporter's transcript, and filed a request for judicial notice of Currier's accusation against Vincent Spohn, which Currier filed with the California Supreme Court and the California State Bar. The aforementioned motion and request were both opposed by Appellee Robert Chow.

CBG was unable to locate the relevant excerpts of the trial transcript from Case No. 323394, partially because the court reporter from the trial in the underlying case did not send the last volume of the trial transcript to CBG until December 21st, 2005[124]. The unfortunate consequence of CBG's delay in filing a reply brief in support of the motion to augment the record and the request for judicial notice, is that both were denied by this Court on January 6th, 2006. The motion to augment the record may have been denied because no specific excerpts from the trial transcript were provided to this court, and the request for judicial notice may have been denied because there was no evidence of the Supreme Court having taken action based on Paul Currier's November 4th, 2005 accusation against CBG corporate counsel Vincent Spohn.

The failure to grant the motion to augment the record and the resultant failure to consider the transcript excerpts could cause this Court to fail to understand that the causes of action plead against CBG and Currier, which were not discussed in Judge Goldsmith's *Statement of Decision*, had in fact previously "been dismissed on the record" at

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[124] *Reply Declaration of Jeffrey Marc Weiss in Support of Motion to Augment Record*, at ¶8.

trial[125]. The failure to grant the request for judicial notice could potentially further mislead this Court into believing that Vincent Spohn did not commit significant attorney misconduct warranting relief from the default judgment[126]. Further, the failure to grant consideration of short excerpts of the trial transcript could cause the Court to neglect the fact that Chow and his counsel lied to this Court about undisputed facts.

Respectfully submitted,
WEISS & WEISSMAN

Dated: January 18, 2006

/s
Jeffrey Marc Weiss
Counsel for Defendant-Appellant
COMMUNICATION BRIDGE GLOBAL, INC.

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[125] *Additional Declaration of Jeffrey Marc Weiss in Support of Request for Judicial Notice*, ¶¶7-10, Exs. 1-4.

[126] *Additional Declaration of Jeffrey Marc Weiss in Support of Request for Judicial Notice*, ¶¶11, Ex. 5.

A011455

IN THE COURT OF APPEAL OF CALIFORNIA
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ROBERT CHOW,
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vs.

PAUL TALCOTT CURRIER,
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Defendants.

AND RELATED ACTIONS.

Appeal from the Superior Court, San Francisco County
Hon. Ronald Quidachay, Judge

REPLY BRIEF IN SUPPORT OF MOTION TO AUGMENT RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; REPLY DECLARATION OF JEFFREY MARC WEISS IN SUPPORT OF MOTION TO AUGMENT RECORD; DECLARATION OF PAUL TALCOTT CURRIER; EXHIBITS

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[Entered on January 18, 2006]

This is the reply of the Appellant, Communication Bridge Global, Inc. ("CBG") in support of its request for augmentation of the record on appeal to include certain excerpts from the reporter's transcript in San Francisco Superior Court Case No. CGC-01-323394. The request was and is made pursuant to Rule 12, subdivision (a) of the California Rules of Court.

Copies of the excerpts to be added to the record are attached to this reply brief. CBG apologizes for not being able to locate the relevant portions of the reporter's transcripts at an earlier time, but CBG was certain that the excerpts were in the transcripts of the proceedings of November 29 and 30, 2004, and CBG had not received the transcripts of the proceedings for both of those dates until after the initial motion for augmentation, on December 21, 2005. Between that, the vacation schedule of Jeffrey Marc Weiss, CBG's counsel, and the press of business[127], CBG was unable to file this motion at an earlier time. The relevant excerpts are attached as exhibits to the *Reply Declaration of Jeffrey Marc Weiss In Support of Motion to Augment Record*, below.

CBG previously asserted that the causes of action against CBG and co-defendant Paul Talcott Currier ("Currier") were dismissed by Judge Goldmsith at trial on November 30, 2004. However, upon further review of the trial transcripts, CBG learned that Michael Fish ("Fish"), then counsel for plaintiff-appellee Robert Chow, voluntarily withdrew each and every cause of action against Currier that was also stated and plead against CBG at trial in the instant action.

This reply is based upon the attached memorandum of points and authorities and reply declaration from Jeffrey Marc Weiss, as well as the exhibits attached hereto.

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[127] See, generally, the *Declaration of Jeffrey Marc Weiss in Support of Motion for Reconsideration*, filed separately herewith as part of CBG's *Motion for Reconsideration of Order Denying Motion to Augment Record and Request for Judicial Notice*.

Respectfully submitted,
WEISS & WEISSMAN

Dated: January 18, 2006 By: /s
Jeffrey Weiss
Attorneys for Defendant
Communication Bridge
Global, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

This Court is empowered to augment the record pursuant to California Rule of Court 12(b)[128]. Such augmentation may be made either upon motion or by the court *sua sponte*. For example, in *McLaughlin v. Walnut Properties, Inc.*[129], the court *sua sponte* augmented the record to include missing documents on a summary adjudication appeal because the issue was purely one of law; the facts were undisputed.

In this case, the excerpts of the reporter's transcripts should be admitted solely for the purpose of establishing an indisputable fact - the dismissal at trial of the causes of action stated against both Currier and CBG.

In the trial transcript, Fish specifically stated:

> "We [i.e. Chow, as represented by Fish] are not going to proceed on ... the tenth cause of action for breach of contract, and the fourteenth cause of action for defamation. We are not proceeding on the first cause of action for conversion; the third cause of action for violation of the Business and Professions Code §17200; the Ninth Cause of Action for Unjust Enrichment; the Eleventh Cause of Action for Intentional Interference with Economic Advantage; nor Number Twelve, RICO, and [the] Thirteenth Cause of

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[128] *Russi v. Bank of America* (1945) 69 Cal.App.2d 100, 102.

[129] (2004) 119 Cal.App.4th 293, 299.

Action for Quantum Merit [*sic*][130].

The transcript excerpts would be crucial in determining a claim made by Appellee Robert Chow ("Chow"), namely that none of the claims against CBG were tried when Chow took his claims against Paul Talcott Currier ("CURRIER") to trial. The fact is, all the causes of action not mentioned in the *Statement of Decision* issued by Judge Goldsmith were voluntarily withdrawn by Chow's counsel at the November 2004 trial against Paul Talcott Currier, as stated above. Even if they were not, the same causes of action were cited by Judge Goldsmith as being without merit.

> THE COURT: I want to tell you [Currier] and I want to tell Mr. Fish what I think this case boils down to. After we got through all these causes of action, you got conversion, fraud and deceit, violation of Business [and Professions] Code Section 17200 negligence, misrepresenting, intentional breach of fiduciary duty, constructive fraud, negligent breach of fiduciary duty, unjust enrichment, breach of contract, [and] intentional interference with economic advantage.
>
> Probably what you're left with so far from what I've seen is the allegation pertaining to libel[131].

It is clear from those two transcript excerpts alone that Judge Goldsmith did, in fact, consider all the causes of action plead against both Currier and CBG that were not actually voluntarily dismissed by Fish during the trial against Currier. Obviously, both Fish and Judge Goldsmith found that those causes of action, stated against Currier, had no merit.

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[130]Trial (Reporter's) Transcript, Vol. 5. Ex. 4 to the *Reply Declaration of Jeffrey Marc Weiss In Support of Motion to Augment Record*, ("Weiss Dec.") p. 407:23 - 408:5.

[131]Weiss Dec., Ex. 5; 490:6-15.

Currier was the only alleged, and indeed, the only possible, agent of CBG who could have performed any of the tortious acts Chow alleged against CBG and Currier[132]. Therefore, if Currier was found not to have wronged Chow, CBG could not possibly have wronged Chow. It is plainly obvious from these undisputable facts that the default judgment entered against CBG cannot withstand any examination based on the merits of the case, and as such, ought to be vacated.

CBG acknowledges that a motion to augment the record filed after a previous motion for augmentation has been filed "will only be entertained upon a showing of good cause[133]."

As stated in the initial moving papers in support of this motion, counsel for CBG was surprised by Chow's assertion that none of the causes of action stated against CBG were tried against CURRIER, and upon finding that there is nothing in the Superior Court case file memorializing the dismissal of the causes of action stated against both CBG and CURRIER.

Furthermore, CBG was "surprised" by the flat-out lies Chow's counsel has told this Court. In Chow's opposition to CBG's previous motion to augment the record to include the order granting relief from default in the sister case to this action, San Francisco Superior Court Case No. 323391 ("323391"), Chow stated that CBG's introduction of that document would unfairly prejudice Chow because the document would be out of context.

However, at trial in the instant action, Chow's counsel requested that the Court take judicial notice of 323391.

> Additionally, there is a companion case that was filed approximately the same time, and at certain point we'll be asking the Court to take judicial notice of that, and that case is No. 323394 - - I'm

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[132] There were never any causes of action stated by Chow against CBG only. Weiss Dec., ¶7.

[133] 1st Appellate Dist. R. 6(b).

sorry - - 323391, and that's Communication Bridge USA versus the same defendants in this case[134]

Chow simply cannot "have it both ways." Either 323391 should be considered in this appeal or it should not. It is plainly obvious that even Chow admits that the cases are as related as conjoined Siamese twins and should be thus considered "companions" together. Even Chow's own legal counsel had a hard time distinguishing the two cases, as seen in the quote directly above. The reasons the cases should be considered together are stated in the opening and reply briefs of this appeal. Those reasons boil down to the facts that the nucleus causes of action are virtually the same, and the basis of all facts alleged by Chow in both 323391 and 323394 are an identical nexus. The parties in each case were either identical or in privity with parties to the sister case. Therefore, what happened in 323391 is directly relevant to the judgment in 323394, and should be considered by this Court.

The question in this Court's collective mind should be "Why is Chow trying to hide the truth from us?" The answer is, of course, because, while it furthers the cause of justice and this court's understanding of the case, it harms Chow's case. The introduction of both evidence from Case No. 323391 and the reporter's transcript in Case No. 323394 is necessary because this evidence accurately portrays Robert Chow as a bully, thief, and villain who enjoys abusing legal process and who stubbornly refuses to take responsibility for his own actions.

Finally, CBG was taken by surprise by Chow's factually erroneous assertion that the causes of action he plead against CBG were not ruled upon by the trial court. In addition to the passages from the trial transcript cited above, Judge Goldsmith also expressed his opinion regarding the RICO cause of action at several other points in the trial transcript. The transcript factually proves that, early in the trial, Fish voluntarily dismissed over one half of his initial causes of action, including RICO. "The Court: You don't have RICO. ... Well, [Fish is] not

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[134]Weiss Dec., Ex. 1: 8:6-11.

proceeding on it[135]." "The Court: There's no RICO issue here[136]."

Finally, the transcripts are essential to show that Spohn committed perjury under oath by testifying that he had no contact with Fish prior to the trial date, when Spohn was, in fact, the corporate counsel for CBUSA who had hired Fish according to Fish's later sworn declaration [137].

Spohn also admits that Currier was Spohn's client before CBUSA was his client, and that he admitted he was asked to do legal work for both CBG and CBUSA[138]. Spohn further perjured himself by denial of his factual legal relation as concurrent general counsel for both CBG as well as CBUSA. These facts are essential to showing that Spohn committed positive misconduct against both his clients- Currier, CBUSA, *and CBG*. Even tacit admission of having committed positive misconduct by working for CBUSA, while an unwaived conflict of interest between CBUSA and Currier existed - Spohn in fact did gain confidential information of Currier's and CBG's that was material to Spohn's employment with CBUSA. Spohn did not obtain Currier's permission to continue representing CBUSA[139], while, in fact, Spohn did continue as corporate counsel for CBUSA, by hiring Fish to sue Currier and CBG, and then immediately abandoned both Currier and

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[135]Weiss Dec., Ex. 2, at 209:19; 209:23. Fish also commented "I'll give up on the RICO." *Id.*, at 208:27-28.

[136]*Id*, Ex. 3, 265:21.

[137]Weiss Dec., Ex. 2, 59:25-28, 60:1-5; Ex. 6, *Declaration of Michael Fish In Support of Defendants' Motion to Strike*, ¶3 "In summer 2001, Vincent Spohn, corporate counsel for CBUSA referred Robert Chow to me to provide legal services regarding ... CBUSA".

[138]*Id.*, at 60:9-15; 62:24-63:13, 79:8-80:4; 149:5-150:4.

[139]California Rules of Professional Conduct, Rule 3-310(F).

CBG to *propria persona, pro se* self-defense. Currier attempted pen-to-paper pleadings as recorded in the files of these matters (Case Nos. 323391 and 323394) and a related felony false bankruptcy filed by Spohn's colleague, James McIntosh, illegally and fraudulently on behalf of Robert Chow. These cases are referenced in the bankruptcy file in Northern District of California Bankruptcy Court Case No. 01-32161. The bankruptcy is referenced in the case management statements for both companion cases. An attorney's positive misconduct is a ground upon which a court can and should vacate a default.

CONCLUSION

All the evidence cited above supports CBG's case for reversal of Judge Quidachay's May 12th, 2005 denial of relief from the default judgment against CBG, which was granted by Commissioner Loretta Norris on February 7th, 2003. All the evidence demonstrates that for justice to prevail, reversal is necessary.

Furthermore, based on the transcripts in CBG's included pleadings for request for judicial notice, both the State Bar and the California Supreme Court have noticed clear evidence of apparent violations of Rule 3-300 by Vincent Spohn, hired counsel for CBG. Mr. Spohn's status as an active member of the State Bar is now in jeopardy. On January 10th, 2006, the State Bar requested the full trial transcripts of Case No. 323394 from the co-defendant in that trial, Paul Currier. Appellant has only submitted excerpts of some of those same trial transcripts to this Court. To submit the full trial transcripts (two reams of paper) is not necessary to demonstrate that David Nied factually lied to this California Court of Appeals, in the instant appeal!

Due to the seriousness of this offense, factually and intentionally misstating the truth in order to affect the outcome of a tribunal, sanctions are now appropriate - in addition to reversal of the lower courts. Appellant requests sanctions be ordered by the appellate court against David Nied (State Bar No. 136413) of Chapman, Popik & White, LLP.

The first appropriate sanction is a $350,000 penalty, levied on Mr. Nied, to be payable to the Office of the General Counsel of the State Bar.
If sanctions are not imposed now, the Court clearly sends the message to all lawyers in California that willful and intentional dishonesty to the Bench is now the permissible law of our state.

The second appropriate consequence for the crime of lying to the Appellate Court is a $350,000.00 reversal of the default judgment in favor of Chow, reversed and awarded to CBG, to accompany judgment for CBG.

CBG further seeks punitive damages in the amount of $350,000.00 from Chow for failure to relieve CBG from the bogus default judgment Chow secured through the agency of Michael Fish, State Bar No. 98161, as hired CBUSA corporate litigator for CBUSA by Chow and CBUSA corporate counsel Vincent Spohn.

The positive misconduct CBG counsel Vincent Spohn committed against CBG, while Spohn also represented CBUSA and Currier in separate matters, is gross conflict of interest. The California Supreme Court already ruled on this matter *en banc* on January 4, 2006. This positive misconduct by Spohn against CBG is core to the instant appeal.

Current counsel for Chow, and Chow personally, have intentionally attempted to hide the truth from the appellate court. The consequence of all of these affirmative acts by Appellee and Appellee's counsel, when considered with the new evidence presented now, supports the additional award to CBG of its attorney's fees and costs in the amount of $75,000.00. CBG prays for attorney's fees and costs now, to accompany judgment for CBG and all the sanctions specified above. CBG does not seek criminal prosecution for lying to the court at this time.

For all the reasons stated above, CBG's motion to augment the record should be granted.

Respectfully submitted,

Dated: January 18, 2006 s/_____

Jeffrey Marc Weiss
Counsel for Defendant-
Appellant Communications
Bridge Global, Inc.

REPLY DECLARATION OF JEFFREY MARC WEISS IN SUPPORT OF MOTION TO AUGMENT RECORD.

I, Jeffrey Marc Weiss, declare:

1. I am the legal counsel for Appellant Communication Bridge Global, Inc. ("CBG") in this case. I have personal knowledge of the events detailed herein, and could testify about them competently in a court of law.

2. Attached hereto and hereby incorporated as Exhibit 1 is a true and correct copy of excerpts from Volume 2 of the trial transcript from San Francisco Case No. 323394, *Robert Chow v. Paul Talcott Currier et al.*

3. Attached hereto and hereby incorporated as Exhibit 2 is a true and correct copy of excerpts from Volume 3 of the trial transcript from San Francisco Case No. 323394, *Robert Chow v. Paul Talcott Currier et al.*

4. Attached hereto and hereby incorporated as Exhibit 3 is a true and correct copy of excerpts from Volume 4 of the trial transcript from San Francisco Case No. 323394, *Robert Chow v. Paul Talcott Currier et al.*

5. Attached hereto and hereby incorporated as Exhibit 4 is a true and correct copy of excerpts from Volume 5 of the trial transcript from San Francisco Case No. 323394, *Robert Chow v. Paul Talcott Currier et al.*

6. Attached hereto and hereby incorporated as Exhibit 5 is a true and correct copy of excerpts from Volume 6 of the trial transcript from San Francisco Case No. 323394, *Robert Chow v. Paul Talcott Currier et al.*

7. Attached hereto and hereby incorporated as Exhibit 6 is a true and correct copy of the *Declaration of Michael Fish in Support of Defendants'* [Special] *Motion to Strike*, filed in San Francisco Superior Court Case No. 05-440882.

8. CBG and I apologize for the delay in producing these transcript excerpts. I did not receive the last volume of the trial transcript from San Francisco Superior Court Case No. 323394 until December 21, 2005. As such, I was unable to search that volume of the transcript until after that date. During the last two weeks of December, 2005, I visited my daughter on a long-planned vacation to Morocco. Since my return to the USA, I also have also been through an unusually heavy volume of client business

towards the end of 2005 and the beginning of 2006. My primary practice is the practice of tax law.

9. In any event, the transcript excerpts show that the causes of action stated against CBG and Currier were dismissed voluntarily by Chow at trial. See, especially, page 407 and 408 of Exhibit 4, in which Michael Fish, then-counsel for Chow, voluntarily dismissed every cause of action that had been stated against CBG in the action. There were no causes of action alleged against CBG but not Currier. Currier was always the party Chow accused of acting as CBG agent for liability purposes in 323394.

I declare under penalty of perjury under California law that the foregoing is true and correct. Executed at San Francisco, California, this 18th day of January, 2006.

Dated: January 18, 2006 By: /s

Jeffrey Weiss
Attorneys for Defendant
Communication Bridge
Global, Inc.

DECLARATION OF PAUL TALCOTT CURRIER

I, Paul Talcott Currier, declare:

1. I am the Chief Executive Officer and Chairman of the Board of Defendant-Appellant Communication Bridge Global, Inc. ("CBG"). I have personal knowledge of the matters detailed herein, and if asked to testify thereabout, could do so competently.

2. I made the decision not to designate the reporter's transcript in the above-captioned appeal, as I did not believe it was necessary. I am not an attorney. I believed that it was clear from the clerk's transcript (i.e. the Superior Court case file from Case No. 323394) that all causes of action not decided by Judge Goldsmith in the *Statement of Decision* had been either voluntarily dismissed by Robert Chow's ("Chow's") trial counsel, Michael Fish, or had been dismissed by Judge Goldsmith at trial. I now realize that I was mistaken, and apologize to the court.

3. I did not become aware that there was no record of the dismissal of the causes of action in the clerk's transcript until the matter was brought to my attention by Chow's opposition to CBG's appeal. I hereby recant my designation of the record on appeal, and request permission from this Court to re-designate the record on appeal to include both the Superior Court case file from Case No. 323394 and the reporter's transcript from the trial in Case No. 323394.

I declare under penalty of perjury under California law that the foregoing is true and correct. Executed at South San Francisco, CA, this 18th day of January, 2006.

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Paul Talcott Currier

S138541

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Accusation of PAUL T. CURRIER Against An Attorney

At its request, the above entitled accusation against an attorney is transferred back to the State Bar Office of the Chief Trial Counsel for further investigation.

SUPREME COURT
F I L E D

JAN -4 2006

Frederick K. Ohlrich Clerk

Deputy

/s GEORGE
Chief Justice

Constitutional Provisions Involved In This Case

First Amendment to the U.S. Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fourth Amendment to the U.S. Constitution

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fifth Amendment to the U.S. Constitution:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."